

I. Remarks

In the Office Action, page 1 states that claims 1-78 are pending and makes no statement as to any claims being withdrawn, but states at page 3 that the restriction is made Final.

Applicant understands that claims 1-93 are pending, and claims 79-93 are withdrawn.

Because claims 1-93 are believed to correspond exactly or substantially to claims 1-43 of United States Patent No. 6,549,937 (the "Auerbach '937 patent"), Applicant understands that recourse is to Petition, which will be filed separately.

In the Office Action, claims 1-78 have been rejected pursuant to 35 U.S.C. Sec. 102(e) as being anticipated by the Auerbach '937 patent. In response, Applicant respectfully submits that the claims define patentable subject matter. The Examiner's attention is drawn to Applicant's filing of July 28, 2004, in the parent application, Ser. No. 09/385,802, reproduced in part as follows:

Claims 1-8, 10-20, and 22-24 stand rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent No. 6,549,937 (the "Auerbach '937 patent").

I. The Rejection Of Claims 1-8, 10-20, and 22-24

The Auerbach '937 patent was filed July 21, 1999, and issued April 15, 2003. The present application was filed on August 30, 1999, less than three months from the effective filing date of the Auerbach '937 patent.

A. Identification Of Claims 1-43 Of The Auerbach '937 Patent

Turning first to the rejection of claims 1-8, 10-15, and 24, Applicant hereby identifies the Auerbach '937 patent, in order to comply with the requirements of 37 C.F.R. §1.607(c). In particular, Applicant identifies claims 1-43 of the Auerbach '937 patent under 37 C.F.R. §1.607(c). Applicant respectfully submits that claims 1-8, 10-15, and 24 of the present application correspond exactly or substantially to claims 1-43 of the Auerbach '937 patent.

As set forth above, new claims 25-102 have been added. These claims were originally filed on April 14, 2004, in United States Patent Application No. 10/824,038, which is a continuation of the present application. Applicant also respectfully submits that claims 25-102 of the present application correspond exactly or substantially to claims 1-43 of the Auerbach '937 patent.

B. Statement Showing That Applicant Is Entitled To Judgment

37 C.F.R. § 1.608(a) states the following:

When the effective filing date of an application is three months or less after the effective filing date of a patent, before an interference will

be declared, either Applicant or Applicant's attorney or agent of record shall file a statement alleging that there is a basis upon which Applicant is entitled to a judgment relative to the patentee.

The present application was filed August 30, 1999, which is less than three months after the July 21, 1999 filing date of the Auerbach '937 patent.

Pursuant to 37 C.F.R. § 1.608(a), Applicant alleges that there is a basis upon which Applicant is entitled to a judgment relative to Auerbach et al, the patentees of the Auerbach '937 patent. In particular, Applicant actually reduced to practice the invention of claims 1-8, 10-15, and 24-102 prior to July 21, 1999, the effective filing date of the Auerbach '937 patent.

The foregoing is maintained herein, except that the claims are renumbered, such that it now follows that claims 1-93 of the present application correspond exactly or substantially to claims 1-43 of the Auerbach '937 patent.

An interview is respectfully requested, and in view thereof, reconsideration of the restriction requirement is again earnestly requested.

With respect to the present application, the Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer, if any, and the prior art that it was made to avoid, may need to be revisited. Nor should a disclaimer, if any, in the present application be read back into any predecessor or related application.

II. Fees

APPLICANT CLAIMS LARGE ENTITY STATUS. The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235.

Please direct all correspondence to the undersigned at the address given below

Respectfully submitted,



Date: August 2, 2010

P.O. Box 7131
Chicago, Illinois 60680-7131
(312) 240-0824

Peter K. Trzyna
(Reg. No. 32,601)
(Customer No. 28710)